City of Wheatland

313 Main Street– Wheatland, California 95692
Tel (530) 633-2761 – Fax (530) 633-9102

CITY COUNCIL MEETING **March 9, 2010**
STAFF REPORT **Agenda Item: 4.1**

Prepared by: Richard P. Shanahan, City Attorney

Agenda Entry: Consideration of termination of development agreements between the City and: (1) Lakemont Overland Crossing, LLC; (2) Wheatland Heritage Oaks, LLC; and (3) Trivest Land Co., Inc.

Background, Purpose and Ordinance Summary:

The City is a party to development agreements with Lakemont Overland Crossing, LLC ("Lakemont"), Wheatland Heritage Oaks, LLC ("Heritage Oaks") and Trivest Land Company, Inc. ("Trivest"). As explained below, Lakemont, Heritage Oaks and Trivest have defaulted on their obligations under those development agreements. This staff report explains each developer's default and the City's response to that default. The City Council may now consider whether to terminate each development agreement. The attached ordinance: (1) recites all of the relevant findings that the City Council would be required to make in order to terminate each development agreement; (2) terminates each development agreement; and (3) provides that any sewer capacity shall remain assigned to the property that was subject to one of the development agreements, but allows the City to reassign that capacity to satisfy future demand and to reimburse the developer for its cost of that sewer capacity.

A. Lakemont's Default

On December 27, 2005, the City and Lakemont entered into a development agreement for the Jones Ranch subdivision. (Development Agreement, Exhibit A.) Lakemont has defaulted on its obligations under the development agreement by: (1) failing to reimburse the City for Lakemont's unpaid pro-rata share of the City's Highway 65/Main Street Signal Improvements in the amount of $66,826.49 (Exhibit A § 3.7.1); (2) failing to reimburse the City for Lakemont's unpaid pro-rata share of the City's Levee

Development Fee Study in the amount of $22,492.57 (Amend. No. 1 to Development Agreement, Exhibit B); and (3) failing to comply with sections 3.2.1.2 and 3.2.4 of the development agreement. (See Exhibit A, §§ 3.2.1.2 & 3.2.4.)

B. Heritage Oaks' Default

On February 26, 2006, the City and Heritage Oaks entered into a development agreement for the Heritage Oaks Estates-East subdivision. (Development Agreement, Exhibit C.) Heritage Oaks has defaulted on its obligations under the development agreement by: (1) failing to reimburse the City for Heritage Oaks' unpaid pro-rata share of the City's Highway 65/Main Street Signal Improvements in the amount of $15,968.10 (Exhibit C § 3.7.1); (2) failing to reimburse the City for Heritage Oaks' unpaid pro-rata share of the City's Levee Development Fee Study in the amount of $18,484.46 (Amend. No. 1 to Development Agreement, Exhibit D); and (3) failing to reimburse the City for Heritage Oaks' unpaid fee obligations, pursuant to Resolution 07-01, which requires full cost billing and reimbursement.

C. Trivest's Default

In 2007, Trivest acquired the non-residential portion of the Heritage Oaks property, specifically lots 3, 6 and 7 of the large lot final map. As part of this transaction, there was a partial assignment of the Heritage Oaks development agreement to Trivest. The sewer capacity rights of the development agreement were not assigned to Trivest. Trivest has defaulted on its obligations under the development agreement by failing to reimburse the City for Trivest's unpaid pro-rata share of the City's Highway 65/Main Street Signal Improvements in the amount of $218,076.22.

D. The City's Response

On December 9, 2009, the City Manager mailed the City's Notices of Default to Lakemont, Heritage Oaks and Trivest. (Exhibit E.) Lakemont, Heritage Oaks and Trivest were required to cure their respective defaults within 30 days after the City sent this notice, or by January 8, 2010. As of February 26, 2010, Lakemont, Heritage Oaks and Trivest had not cured their respective defaults.

In accordance with section 5.1.2 of each development agreement, on February 26, 2010, the City Manager mailed a Notice of Intent to Terminate the development agreements that the City entered into with Lakemont, Heritage Oaks and Trivest. (Developers' Notices, Exhibit F.) These notices included all of the information required by Government Code section 65094 and each development agreement.

Section 5.1.2 of each development agreement requires the City Council to consider terminating the development agreement within 30 days after the date on which the City mailed its Notice of Intent to Terminate the development agreements to Lakemont, Heritage Oaks and Trivest. Government Code sections 65867 and 65868 requires this notice to be provided at least 10 days prior to the date of the City Council's

hearing regarding terminating of the development agreements. The City Council's March 9, 2010 hearing is more than 10 days but fewer than 30 days after the City Manager mailed each Notice of Intent to Terminate.

Pursuant to Government Code section 65091, subdivision (a)(4), on February 26, 2010, the City timely mailed a notice of its hearing at which it would consider terminating Lakemont's, Heritage Oaks' and Trivest's development agreements to each landowner owning property located within 300 feet of any property that is subject to one of these development agreements. (Exhibit G.) This notice included all of the information required by Government Code section 65094.

Pursuant to Government Code sections 6061, 65867, 65868 and 65090, subdivision (a), on February 26, 2010, the City timely published a notice of its public hearing at which it would consider terminating Lakemont's, Heritage Oaks' and Trivest's development agreements in the Marysville Appeal-Democrat, which is a newspaper of general circulation within the City. (Exhibit K (Notice and Proof of Publication).) This notice included all of the information required by Government Code section 65094.

Termination of a development agreement must be approved by ordinance. A proposed ordinance is attached. If, following the public hearings, the City Council desires to proceed with the termination, then it should introduce the ordinance.

In terminating the development agreements, there is a question about how to handle the sewer connection charge advances that have been paid under the agreements. We have concluded that the City may terminate the development agreement and retain the sewer connection charge advances. However, if the City retains the advance payments, then the developer also is entitled to retain some sewer connection credits emanating from those advances.

Accordingly, if the City terminates the development agreement, we recommend that the termination provide that: (1) the City retain the advance payments; (2) the advance payment amount stays with the development land as a credit toward sewer connection charges that may be due upon future development of the property; (3) the property no longer has long-term sewer connection rights (i.e., sewer capacity will be determined by the conditions prevailing at the time of development and application for connection); (4) if another developer in the City is ready and willing and able to utilize the sewer capacity and enter into an agreement with the City and pay the same sewer connection charge advances, then the City will collect the sewer connection charge advance payment from, and transfer the defaulting developer's sewer units to, the other developer; and (5) if the City is able to transfer the sewer units to another developer, then, upon payment of the advance by the other developer, the City will refund to the defaulting developer its sewer connection charge advances (without interest). These provisions are incorporated in the proposed ordinance.